

Supreme Court, U.S.
FILED

05-779 DEC 15 2005

No.

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In the
Supreme Court of the United States

Peter Verniero, Ronald Susswein, John Fahy,
George Rover, J.W. Pennypacker, and Sean Reilly,

Petitioners,

v.

Emory E. Gibson, Jr.,

Respondent

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The delayed-accrual rule of *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994), delays the accrual of a claim under 42 U.S.C. § 1983 which, if successful, would necessarily imply the invalidity of the § 1983 plaintiff's conviction or sentence until the plaintiff's conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by a federal court's issuance of a writ of habeas.

1. Is a § 1983 plaintiff's claim that the police conducted an unlawful search in violation of the Fourth Amendment subject to the delayed-accrual rule of *Heck v. Humphrey* because the search uncovered evidence used to convict the plaintiff at his or her criminal trial?

2. Is a § 1983 plaintiff's claim that the police selectively enforced the laws against the plaintiff in violation of the Equal Protection Clause subject to the delayed-accrual rule of *Heck v. Humphrey* because the enforcement led to the discovery of evidence used to convict the plaintiff at his or her criminal trial?

LIST OF PARTIES

The petitioners are Peter Verniero, Ronald Susswein, John Fahy, George Rover, J.W. Pennypacker, and Sean Reilly. Respondent is Emory E. Gibson, Jr.

The Superintendent of New Jersey Department of Law and Public Safety-Division of State Police, the New Jersey Turnpike Authority, and the Treasurer of the State of New Jersey, like petitioners, were appellees in the court below but are not petitioners in this action.

John Does 1-10 were named as defendants in the district court and were named as appellees in the court below, but the plaintiff (respondent Gibson) did not identify or serve them.

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CONSTITUTIONAL AND STATUTORY PROVISIONS

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RULES

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit (App., *infra*, 1a-44a) is reported at 411 F.3d 427 (3rd Cir. 2005). The opinion of the district court (App., *infra*, 47a-79a) is unreported.

JURISDICTION

The court of appeals' judgment was entered on June 14, 2005. (App., *infra*, 45a-46a). A timely petition for panel rehearing or in the alternative for rehearing en banc was denied on August 17, 2005. (App., *infra*, 80a-81a). On November 4, 2005, Justice Souter entered an order extending to December 15, 2005, the time within which petitioners were permitted to file this petition. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides in relevant part that: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated" U.S. Const. amend. IV. The full text of this constitutional amendment is reproduced at App., *infra*, 82a.

Section 1 of the Fourteenth Amendment to the United States Constitution provides in relevant part that: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. The

full text of this section of this constitutional amendment is reproduced at App., *infra*, 83a.

The relevant portion of 42 U.S.C. § 1983 provides that: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law . . ." The full text of this statute is reproduced at App., *infra*, 84a.

STATEMENT OF THE CASE

Circuit courts, like the majority and dissenting opinions of the United States Court of Appeals for the Third Circuit in the decision below, are divided on the issue of how to apply the delayed-accrual rule of *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994), to a § 1983 plaintiff's claim which, if successful, would not automatically imply the invalidity of the plaintiff's conviction or sentence, but would imply the illegality and consequent taint of evidence used to convict the plaintiff at his or her criminal trial. This issue arises in several contexts. The issue arises most often in the Fourth Amendment context when a § 1983 plaintiff claims that the police conducted an unlawful search that uncovered evidence that was not but should have been suppressed at the criminal trial. The issue also arises when a court concludes that a § 1983 plaintiff's claim that the police violated the Equal Protection Clause by enforcing the laws in a selective manner, if successful, would imply the illegality and taint of evidence that was not but should have been suppressed at the plaintiff's criminal trial because the unlawful selective enforcement led to its discovery.

In footnote seven of the *Heck* opinion, this Court provided guidance on this issue in its discussion of the application of the delayed-accrual rule to a § 1983 Fourth Amendment claim of unlawful search: